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June 27, 2006

Secretary
Federal Communications Commission
Washington, D.C. 20554

RE: Corrected Copy of Reply Comments (in Docket RM-11331)

Dear Commissioners and Commission Staff,

Yesterday, June 26, 2006, Nikolaus E. Leggett and I filed Reply Comments in FCC Docket RM-11331 (which concerns a Petition to allow locally programmed translators).

Since then, I have discovered some typographical errors. Consequently, we are submitting a "clean" copy which corrects these errors.

The *only* changes from the first version are as follows:

Page 2: First paragraph, second sentence
Second paragraph, first sentence
Second paragraph, fourth sentence
"Docket RM-10331" was corrected to "Docket RM-10330".

Page 7: First paragraph, second sentence
"According to various accounts" was changed to "according to various accounts".

Second paragraph, first sentence
"on a more modest" was changed to "on a more modest scale".

Page 8: Second paragraph
"he worked a Legislative Counsel" was changed to "he worked as Legislative Counsel".

Page 9: Ninth paragraph
“broadcast localism” was changed to “Broadcast Localism”.

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These errors were my fault, and I apologize for them.

Sincerely,

Don Schellhardt
For himself and Nickolaus E. Leggett

UNITED STATES OF AMERICA
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

Miller Media Group)	
Petition For Rulemaking)	
To Allow The Option Of)	FCC Docket No. RM-11331
Local Programming)	
On FM Translator Stations)	

**REPLY COMMENTS OF DON SCHELLHARDT, ESQUIRE KI4PMG
AND NICKOLAUS E. LEGGETT N3NL
TO THE WRITTEN COMMENTS OF
THE NATIONAL ASSOCIATION OF BROADCASTERS (NAB)
AND SAGA COMMUNICATIONS**

The undersigned commenters are Amateur Radio operators and current residents of Virginia. We were also 2 of the 3 signatories of the Petition For Rulemaking which triggered the Federal Communications Commission's first deliberations, in FCC Docket RM-9208, on establishing a Low Power FM (LPFM) Radio Service. We were joined on that Petition by Nick Leggett's wife, Judith Fielder Leggett of Virginia.

In the course of supporting establishment of a Low Power FM Radio Service, Don Schellhardt co-founded, and later led, THE AMHERST ALLIANCE: a Net-based, nationwide citizens' advocacy group for media reform in general and Low Power Radio in particular.

We are also 2 of the 5 signatories of the Petition For Rulemaking which triggered the FCC's first deliberations, in FCC Docket RM-11287, on establishing a Low Power AM (LPAM) Radio Service. We were joined on this Petition by THE AMHERST ALLIANCE of Michigan, THE MICHIGAN MUSIC IS WORLD CLASS! CAMPAIGN and THE LPAM NETWORK of New York.

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Further, the undersigned parties, acting together or in tandem, have submitted hundreds of filings in various FCC proceedings. We have also filed, jointly or individually, 3 other Petitions which led to rounds of public comment in FCC Dockets: RM-5528, RM-10330 and RM-10402.

The jointly filed Petition in Docket RM-10330, containing proposed regulations for protecting vital civil electronics equipment against an Electromagnetic Pulse (EMP) attack, was filed shortly after the attacks of September 11, 2001. It was denied by the Commission's staff in June of 2002. We appealed the staff's decision to the full Commission, but today -- more than 4 years later -- the Commissioners have neither granted nor denied our appeal. Thus, the RM-10330 Petition For Rulemaking remains "alive", in a state of legal limbo, and could still be the subject of action by the current Commissioners (most of whom were not on the Commission in June of 2002).

We filed joint Written Comments in the present Docket, RM-11331, on June 2, 2006. Now, we submit these Reply Comments to the respective Written Comments of the NATIONAL ASSOCIATION OF BROADCASTERS

(NAB) and SAGA COMMUNICATIONS, both of which were filed on June 9, 2006.

Times Have Changed Since 1990

Both NAB and SAGA COMMUNICATIONS ask the FCC not to re-open its earlier decision to deny a proposal for local programming on translators. They oppose taking another look at an issue which was resolved in the past.

However, the decision they cite was made in 1990: 16 years ago. “Water has passed under the bridge” since then. Some might call that water a flood.

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Small, Independently Owned and Locally Focused Radio Stations Are No Longer Nearly As Common As They Were In 1990

In 1990, the routine and mandatory auctioning of commercial radio licenses was still years in the future. Commercial radio licenses were not yet being sold to the highest bidder, without regard for the needs or preferences of affected listeners.

Also in the future, back in 1990, were increases in the FCC’s “caps” on how much of the commercial radio industry a single institution could control. The ownership caps were still ceilings -- not “cathedral ceilings”.

As a result of these changes, a clear majority of the small, independently owned and locally focused radio stations have vanished from the airwaves. They have been acquired by megacorporate broadcasting “chains” or driven out of business completely.

Further, due to mandatory license auctions, the cost of “market entry” has been rendered unaffordable for all but those with the deepest pockets. As many small, local and independent commercial stations have disappeared, they have not been replaced by new small, local and independent stations.

NATIONAL PUBLIC RADIO Has Approached A Virtual Monopoly Of Non-Commercial, Non-Religious Radio Stations

Long before 1990, NATIONAL PUBLIC RADIO set its sights on “standardizing” all public radio stations in the name of “professionalism”. In practice, this meant pursuing an NPR monopoly of public radio by either driving independent public radio stations off the air or converting them into satellites of NPR. The FCC, unfortunately, cooperated with NPR’s designs by banning the licensing of new Class D educational stations -- and then declining to look very closely at the level of student control, and locally originated programming, before and after a station’s assimilation into NPR.

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As we have acknowledged, this trend did not begin in 1990. However, it has certainly accelerated since then.

As an aside:

We recommend that media ownership ceilings should apply to *non-commercial* radio stations, as well as commercial radio stations. Neither

NPR nor Calvary Chapel should be allowed to gain greater market dominance than Clear Channel.

Translator Abuse Has Made *Standardized* Religious Stations Much More Plentiful

In authorizing the spread of satellite-fed translators, aka “satellators”, the Commission probably did not intend or foresee that the authorization would give birth to evangelical broadcasting “chains” of international dimensions.

Nevertheless, this misuse of satellators, which post-dates 1990, has been evident for quite some time. It has been compounded by the separate but related practice of fraudulent misrepresentation of networked religious stations as “local”. Though both of these problems are literally “common knowledge” throughout the radio industry, the Commission has yet to take clear action to redress the current extreme imbalance.

Fortunately, the FCC has been officially “considering” corrective action for years, in different Dockets. Unfortunately, it has yet to take the next step of issuing -- or even proposing -- new, corrective regulations. Nor has it imposed any serious penalties for the flagrant disregard of some regulations that are already “on the books”.

We hope that corrective actions will be taken very soon.

We are not opposed to either religion or religious broadcasting. One of us, Don Schellhardt, is a churchgoing Christian, albeit with sometimes unorthodox views, who has made crucial life decisions, with long-lasting consequences, on the basis of his faith.

He would not be an underpaid “do-good lawyer” for media reform if he did not believe.

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Thus, what we oppose is not religious broadcasting as a concept -- but rather the degeneration of most religious broadcasting into a megacorporate, internationally standardized model.

The trend for religious stations makes the decline in broadcast localism “3 for 3”:

Commercial standardization since 1990

And

Public radio standardization since 1990

And

Religious broadcasting standardization since 1990

**A Key Rationale For The FCC’s Decision
Has Been Invalidated Since 1990**

In its June 9, 2006 Written Comments in this Docket, SAGA COMMUNICATIONS quotes at some length from the Commission’s 1990 decision.

Part of the quoted material expresses a key concern that motivated the FCC at the time: the possibility that locally programmed translators could be used to evade the accountability expected of the primary station.

To understand the Commission’s explanation, one must remember that, Once Upon A Time, both the acquisition and the renewal of station licenses depended on surviving careful Commission scrutiny. For both the initial license acquisition, and the subsequent license renewals, the station had to demonstrate reasonably meaningful and consistent fidelity to the “public interest” of its listeners -- and, indeed, of the nation.

In this context, the FCC was naturally troubled by a proposal which might allow the public interest accountability of the primary station to be evaded. The Commission did not want to see independent local programming, by translators, which was not subject to the public interest accountability expected of the primary station.

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Unfortunately, those days are gone -- hopefully not forever, but at least for now. There are, essentially, no longer any standards of public interest accountability for the primary stations to evade.

Therefore, there is no longer any reason to fear that locally programmed translators might be used to evade them.

When and if some meaningful degree of public interest accountability is again expected of primary stations, we would happily support addressing the concern of 1990 by making local programming on translators subject to the same accountability as programming on the primary station. Indeed, we have already recommended, in our June 2 Written Comments, that a locally programmed translator should be subject to the same standards as an LPFM station if it wants protection against the possibility of being displaced by an LPFM station.

The Listeners of America Don't Like These Changes

When the LPFM Petition For Rulemaking that we filed in 1997 became Docket RM-9208 in 1998, and was then joined by the J. Rodger Skinner Petition For Rulemaking that became Docket RM-9242, the two Dockets led in turn to Docket 99-25. That latter Docket, which produced a

Low Power FM Radio Service early in 2000, attracted more than 3,000 public comments -- most of them supporting LPFM. At the time, Docket 99-25 set a 65-year record for the highest volume of public comments in the history of the FCC.

A few years later, the Commission's Docket on raising media ownership ceilings attracted hundreds of thousands of public comments, as well as overflow crowds at various public Hearings around the country. At least 99% of the citizens who commented were opposed to raising the media ownership caps.

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When this public outcry didn't stop the Commission of the time from raising the media ownership ceilings anyway, except in the case of radio, the matter went before Congress (on its way to the Federal court that ultimately overturned the FCC's action).

At that point, according to various accounts, Congressional legislators were bombarded by E-Mails and phone calls from millions of everyday citizens.

The same pattern of widespread and intense citizen discontent has been evident, although on a more modest scale, in the Commission's Docket on Broadcast Localism. The message to the Commission, and to elected officials as well, is extremely clear.

We grant that the Commission itself has made public participation much easier through the establishment of the Electronic Comment Filing System (ECFS) and other steps. We thank the Commission -- no, we

praise the Commission!! -- for the existence of ECFS. It has truly, truly made a difference.

At the same time ...

That doesn't explain, or even begin to explain, the enormity and the intensity of the public outcry.

Most of these citizens have not been activists. The two of us might think that drafting Written Comments is a fun way to spend a Saturday night. There may be several thousand activists, spread throughout the media reform movement, who feel the same way. But more than 60,000 filings urging the promotion of Broadcast Localism? And nearly 700,000 filings against media ownership ceiling increases? And more than 2,000,000 E-Mails and phone to calls to Congressional legislators on the same issue?

C'mon!! The Don Schellhardts and Nick Leggetts of the country didn't write them all. A lot of everyday citizens, for whom compositions on regulatory policy were a chore rather than a joy, took the time to write in, call in and/or stand in line at a Hearing.

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They didn't do that because they were happy with the status quo.

In this regard, Don Schellhardt remembers the prevailing "rule of thumb" when he worked as Legislative Counsel to a Member of Congress:

Every letter received from a constituent represents 100 voters who thought about writing a letter on that subject.

Let's see. 700,000 filings with the FCC, opposing an increase in media ownership ceilings, x 100 = ??

Even 60,000 filings with the FCC, calling for reform in the Broadcast Localism Docket, x 100 = ??

The answer to both questions is the same:

Enough voters to elect a new Congress, and a new President, if they stay unhappy.

**Low Power FM Is Not The Complete Solution
To Insufficient Localism In Broadcasting**

We make this statement as the first two people ever to ask the FCC to establish a Low Power FM Radio Service.

We are proud of the role we played in the successful movement to establish the LPFM Radio Service. Still, LPFM stations alone are not enough.

LPFM stations alone are not enough even if the Commission finally ends its 6-year delay in opening "filing window" for 10-watt LPFM stations that can find room on the spectrum in some of the urban areas that now lack any LPFM stations at all.

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LPFM stations alone are not enough even if Congress finally repeals the adjacent channel spacing restrictions that were imposed by Congress in a “lame duck Session”.

Even if both of those long-overdue actions are taken, by the Commission and Congress respectively, we will still need more actions to fill all the unfilled “niches”.

We will still need to establish a Low Power *AM* Radio Service.

We will still need to increase the power ceilings for Part 15 AM radio stations.

And ...

We will still need locally programmed translators.

Eventually, we will need Congressional action to repeal mandatory license auctions -- or at least exempt small commercial applicants from the mandate.

That last recommendation, however, can be argued at another time. For now, to demonstrate why we see a need for the first 5 changes we have listed, we refer the Commission to the more detailed arguments in our June 2, 2006 Written Comments.

Also: We have included in these Reply Comments the same Chart that is found in our Written Comments.

Thus, SAGA COMMUNICATIONS is dead wrong when it states that LPFM is an adequate answer to all of the public’s concerns about insufficient Broadcast Localism.

We also note that SAGA COMMUNICATIONS is being inconsistent. If the FCC will review the filings in Docket 99-25 by SAGA COMMUNICATIONS, including the filing by SAGA COMMUNICATIONS OF NEW ENGLAND, it will see that SAGA COMMUNICATIONS strongly opposed LPFM when it was first

proposed. Now it is showcasing LPFM as the solution to all of the listener discontent over localism.

NAB, at least, has displayed the consistency of not saying anything nice about LPFM at all -- now or then.

COMMUNITY-SIZED, COMMUNITY-FOCUSED RADIO STATIONS: PUTTING ALL THE PIECES OF THE PUZZLE TOGETHER

(Underlining means that additional FCC action is required)

	Are Stations Generally Viable Air In These Areas? <u>Commercials?</u>			Are Licenses Open To <u>Newcomers?</u>	May Stations
	<u>Highly Rural</u>	<u>Typical</u>	<u>Highly Urban</u>		
“Local Programming” Translator: 250W [5/06 Miller Media <u>Proposal</u> , Docket RM-11331]	<u>YES</u>	<u>YES</u>	No	<u>YES</u>	<u>YES</u>
Low Power FM (LPFM): 100W [Authorized in 2000 and now operating]	Maybe	<u>YES</u>	No	No	No
LPFM: 10W [Authorized in 2000, but not yet implemented]	No	<u>YES</u>	<u>YES</u>	No	No
Low Power AM [LPAM]: 10W [5/06 Revision of Amherst Et Al. <u>Proposal</u> , Docket RM-11287]	No	<u>YES</u>	<u>YES</u>	<u>YES</u>	<u>YES</u>
Part 15 AM:					

Power Boosted

[11/05 Radio

Ready To Grow

Proposal, not yet

Docketed]

No

Maybe

YES

YES

YES

6/2/06

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Conclusion

For the reasons we have stated, we urge the FCC to grant the RM-11331 Petition.

Respectfully submitted,

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Dated: _____
June 26, 2006

CERTIFICATION

I, Donald J. Schellhardt, Esquire KI4PMG, hereby certify that a copy of these June 26, 2006 Reply Comments is being sent to the listed attorney for the NATIONAL ASSOCIATION OF BROADCASTERS (NAB) and the listed attorney for SAGA COMMUNICATIONS.

Donald J. Schellhardt, Esquire KI4PMG
2006

June 26,